

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

LUCIOUS RAY JOHNSON, #278593	§	
VS.	§	CIVIL ACTION NO. 6:06cv161
JOY SECKLER, ET AL.	§	

ORDER OF DISMISSAL

Plaintiff Lucious Ray Johnson, a prisoner confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the complaint should be dismissed. The Plaintiff filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit.

The Plaintiff complained about the medical care he received for a yellow jacket sting. The Court developed the claim by ordering the prison system to submit a written report, known as a Martinez Report. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978) (cited with approval by the Fifth Circuit in *Cay v. Estelle*, 789 F.2d 318 (5th Cir. 1986)). The Report submitted consisted of the an affidavit from Dr. Monte K. Smith, along with the Plaintiff's medical and grievance records.

After reviewing the Report, Magistrate Judge Love concluded that the Defendants were responsive to the Plaintiff's medical needs and were not deliberately indifferent. The Plaintiff complained in his objections about the consideration of the Report, but the Fifth Circuit has clearly held that a court may consider Martinez Reports in evaluating claims of deliberate indifference to serious medical needs. *See Norton v. Dimazana*, 122 F.3d 286, 291-292 (5th Cir. 1997). The medical records, with the explanation provided by Dr. Smith, clearly show that the Defendants were not deliberately indifferent to the Plaintiff's serious medical needs. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 29th day of November, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE